IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3578 of 1987

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

ANIL H PATEL
Versus
STATE OF GUJ. & OTHERS

==========

Appearance :
MR JJ YAJNIK for Petitioner.
Mr. Amit Patel, ASST. GOVT. PLEADER for Respondents.

==========

CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 15/11/2006

ORAL JUDGMENT

By filing this petition, the petitioner has prayed

that appropriate direction may be given to the respondents to treat the petitioner in continuous service as lecturer in Statistics on regular basis and to regularize his services from the date of his first appointment on 28.11.1985.

This petition is pending before this Court since 1987. The petitioner has continued in service in view of interim order granted by this Court. Initially, the petitioner was appointed as lecturer in Statistics subject in H & H.B. Kotak Institute of Science, Rajkot by order dated 23-11-1985. As per the appointment order, his appointment was temporary till GPSC selected candidate is available. Since the petitioner was apprehending termination, and since his services were not regularized, the petitioner has filed this petition with a prayer that his services should be regularized.

Mr. Amit Patel, learned AGP submitted that in view of the judgement of Division Bench of this Court in K.D.Vohra V. Kamleshbhai Gobarbhai Patel reported in 2003 (2) GLR 1342, the petitioner cannot be continued on said post as his appointment was on ad-hoc basis. He further submitted that in view of the directions given by this Honourable Court in Special Civil Application No.5415/1997, petitioner's services would be continued till GPSC selected candidate is available or any other employee is transferred from other department to the department where the petitioner is serving. He further submitted that even if any occasion arises for terminating the services of the petitioner, principle of 'last come first go' will be followed.

In response to the petition, affidavit-in-reply has been filed by Joint Director, Commissioner of Higher Education Office, Gandhinagar. In paragraph 5 of the affidavit, it is stated that the petitioner was appointed as ad-hoc lecturer and at present he is working in Kotak Science College, Rajkot, as no GPSC selected candidate is appointed vice him on the said post.

I have heard both the learned advocates and I have also gone through the decision of learned Single Judge delivered in Special Civil No.7604/1997 and allied matters dated 6-2-2006. I have also gone through the judgement of learned Single Judge delivered in in Special Civil Application No.5415/1997.

Considering the facts and circumstances of the case and considering aforesaid judgements, prayer of the petitioner to the effect that his services may be regularized cannot be granted. However, this petition is disposed of with the following directions.

[i]. Services of the petitioner may be continued till he is required to be replaced either by GPSC selected candidate or by any other suitable candidate by way of transfer.

[ii]. In case the services of the petitioner are required to be terminated, then principle of 'last come first go' should be followed.

[iii]. It is pointed out by Mr. Yagnik, learned advocate for the petitioner that some similarly

situated lecturers have already been sent to private granted colleges. If that be so and if Government has evolved any policy to send such lecturers in private granted college, case of the petitioner also may be considered, however, it is for the Government to consider whether petitioner can be sent in a private granted college as a lecturer and this question is left to the discretion of the Government.

[iv]. As per the judgement of the Division Bench, the Government shall consider to form a separate cadre and, thereafter, the Government may also consider whether the petitioner can be accommodated in such cadre in light of the directions given by Division Bench of this Court.

In view of aforesaid directions, this petition is partly allowed. Rule is made absolute accordingly with no order as to costs.

(P.B.Majmudar, J.)

mathew